

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3584 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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SHASHANK @ SHAKTI REMESHBHAI TRIVEDI

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/11/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. H.R. Prajapati for the petitioner and learned A.G.P. Mr. D.P. Joshi for the respondents.

The detention order dated 16-1-1999 passed by the respondent no.2-Commissioner of Police, Ahmedabad City against the petitioner in exercise of powers conferred

under Section 3(1) of the Gujarat Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "B" indicate that criminal case vide CR no.161/99 dated 28-10-1999 and Cr no.174/98 dated 14-12-1998 are registered against the petitioner at Astodiya Police Station for the offences made punishable under the Indian Penal Code and the Arms Act. Furthermore, three witnesses on assurance of their annonymity have supplied information about the petitioner in respect to incident allelged to have occured on 29-11-1998, 5-12-1998 and 9-12-1998 respectively.

3. That in consideration of the said material, the responent no.2 has come to the conclusion that the petitioner is a "dangerous person" within the meaning of Section 2(c) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity which prejudicially affects the maintenance of public order, and hence, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that on the date of passing the impugned order, the petitioner was in judicial custody, and yet the detaining authority has passed the impugned order without considering the aspect of less drastic remedy of opposing and cancellation of bail and as such the subjective satisfaction having been vitiated the order is invalid.

5. On scrutiny of papers, it appears that in the penultimate paragrah of the grounds of detention, the detaining authority has observed that the petitioner was released on bail in respect to CR no.161/98 registered at Astodiya Police Station and had made an application for bail in respect to CR no.174/98. The detaining authority has further observed that the petitioner is likely to get bail in the second matter and after being released on bail he is likely to continue his criminal activity which prejudicially affects the maintenance of public order and as such the impugned order is passed. It may be noted that the detaining authority has failed to consider the aspect of less drastic remedy of opposing and claiming cancellation of bail in a pending case against the petitioner before passing the detention order and has based his conclusion only on the apprehension that the

petitioner would be released on bail by the Court. That due to non application of mind, the subjective satisfaction having been vitiated, the impugned order is rendered invalid.

6. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K.Thakkar & A.L.Dave,JJ.).

7. In the instant case also, the detaining authority having failed to consider the aspect of less drastic remedy of opposing and cancellation of bail discloses the non application of mind on the part of the detaining authority which has vitiated the subjective satisfaction rendering the impugned order invalid.

8. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 16-1-1999 passed by the respondent no.2-Police Commissioner, Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner-detenu -Shashank alias Shakti Rameshbhai Trivedi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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